



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 5, 2023
MOAHR Docket No.: 23-004233
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130, and R 400.3178. After due notice, a telephone hearing was held on November 14, 2023, from Lansing, Michigan. The Department was represented by Holly Borkowski, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On an application for assistance, Respondent acknowledged her duties and responsibilities including the duty to report changes to her cash assets. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-16.
2. Respondent reported on her October [REDACTED] 2020, application for assistance that she possessed cash assets totaling \$[REDACTED] Exhibit A, p 13.

3. Bank statements show that on January [REDACTED] 2021, Respondent deposited \$ [REDACTED] into her bank account and failed to report this to the Department. Exhibit A, p 85.
4. Bank statements show that as of March 16, 2021, Respondent had a beginning balance of \$ [REDACTED] in her bank account. Exhibit A, p 94.
5. Bank statements show that from March 16, 2021, through February 16, 2022, Respondent possessed cash assets exceeding \$15,000. Exhibits A, pp 79-84 and 94-114.
6. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from March 1, 2021, through February 28, 2022. Exhibit A, pp 127-132.
7. On a Renew Benefits form received by the Department on August [REDACTED] 2021, Respondent acknowledged her duties and responsibilities including the duty to report changes to her cash assets. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 29-30.
8. Respondent reported on her August [REDACTED] 2021, Renew Benefits form that she possessed cash assets totaling \$ [REDACTED] Exhibit A, p 29.
9. From August 17, 2021, through September 16, 2021, Respondent had an average monthly balance of \$ [REDACTED] in her bank account. Exhibit A, p 104.
10. Bank statements show that from May 17, 2022, through July 18, 2022, Respondent possessed cash assets exceeding \$15,000. Exhibit A, pp 118-122.
11. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from May 1, 2022, through June 30, 2022. Exhibit A, pp 127-132.
12. The Department's OIG filed a hearing request on July 21, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
13. On July [REDACTED] 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment. Exhibit A, pp 134-135.
14. On July [REDACTED] 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
15. This was Respondent's first established IPV.
16. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges Administrative Manual BAM 720 (October 1, 2017), pp 12-13.

Overissuance

An "overissuance" is an amount owed because of benefits that are overpaid, which the Department must establish and collect. 7 CFR 273.18(a). When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees, and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2023).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include changes of countable cash assets. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2023), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (November 1, 2023), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On an application for assistance dated October [REDACTED] 2022, Respondent acknowledged the duty to report changes of countable cash assets. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On January [REDACTED] 2021, Respondent deposited \$ [REDACTED] into her bank account. If Respondent had reported this deposit within 10 days, the Department would have redetermined her eligibility for ongoing FAP benefits by the first benefit period after February 21, 2021.

Respondent had a beginning balance of \$ [REDACTED] in her bank account as of March 16, 2021. Income is excluded from total assets in the month that it they are received, and the hearing record supports a finding that as of March of 2021, Respondent possessed non-excludable cash assets exceeding the \$15,000 asset limit to remain eligible for any FAP benefits. Department of Health and Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2023), p 5. Respondent continued to remain ineligible for any FAP benefits from March 1, 2021, through February 28, 2022, and from May 1, 2022, through June 30, 2022.

During that period, Respondent received FAP benefits totaling \$ [REDACTED] but was not eligible for any of those benefits. During that period, Respondent received emergency supplemental benefits issued in response to the COVID-19 pandemic issued under the Consolidated Appropriates Act of 2021, and those emergency supplemental FAP benefits cannot be recouped by the Department even though Respondent was not eligible for them. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits.

Intentional Program Violation

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. BAM 720, p. 1; see also 7 CFR 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct, and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on an application for assistance dated October [REDACTED] 2020. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. It is the Department's practice to provide pamphlet material to eligible FAP recipients advising them of their duty to report changes of cash assets. The hearing record supports a finding that Respondent was provided with notice that Respondent was notified of her duty to report changes to her cash assets.

Respondent failed to report a \$ [REDACTED] deposit into her bank account on January [REDACTED] 2021, that would lead to her being ineligible for any FAP benefits. Income is not a countable asset in the month that it is received, but Respondent also had a duty to report all income within 10 days.

On a Renew Benefits from received by the Department on August [REDACTED] 2021, Respondent reported having cash assets totaling \$ [REDACTED]. Bank records show that this statement was false because she had an average monthly balance of \$ [REDACTED] in her bank account from August 17, 2021, through September 16, 2021.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally withheld reporting making a cash deposit exceeding \$15,000, and falsely reported having cash assets less than \$15,000 for the purposes of maintaining her eligibility for FAP benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group if the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Department of Health and Human Services Bridges Administrative Manual (BAM) BAM 710 (January 1, 2018), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.


The Department has established an Intentional Program Violation (IPV).

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).
2. Respondent did receive an overissuance of Food Assistance Program (FAP) benefits in the amount of \$[REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$[REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/dm



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

